

SENATE JOINT RESOLUTION 571
By Ketron

A RESOLUTION to propose an amendment to Article II, Section 28, of the Constitution of the State of Tennessee, relative to taxation of income.

WHEREAS, Article I, Section 1 of the Declaration of Rights of the Constitution of the State of Tennessee provides: "That all power is inherent in the people," thereby establishing that the legislature has no powers other than those delegated to it by the people in the Constitution; and

WHEREAS, the Constitution of the State of Tennessee in Article II, Section 28, lists the only taxing powers delegated to the legislature and gives it the "power to levy a tax upon incomes derived from stocks and bonds that are not taxed ad valorem" but does not give the legislature the power to levy a tax on or measured by incomes of natural persons; and

WHEREAS, such "power to levy a tax upon incomes derived from stocks and bonds that are not taxed ad valorem" was contained in Article II, Section 28, of the Tennessee Constitution when it was adopted in 1870, and such provision is contained verbatim in the 1973 amendment to Article II, Section 28; and

WHEREAS, in the case of Evans v. McCabe, 164 Tenn. 672, 52 S.W.2d 159 (1932), in a decision by four justices with one justice concurring, the Tennessee Supreme Court held that such provision "conferred upon the legislature the power to tax only one class of income" and "necessarily denied to the legislature the power to tax incomes of other classes" and, therefore, that a tax on personal income enacted by the legislature was unconstitutional; and

WHEREAS, in the case of Jack Cole Co. v. MacFarland, 206 Tenn. 694, 337 S.W.2d 453 (1960), and also in the case of Gallagher v. Butler, 214 Tenn. 129, 378 S.W.2d 161 (1964),

both unanimous opinions, the Tennessee Supreme Court quoted and followed its ruling in Evans v. McCabe; and

WHEREAS, despite three rulings by the Tennessee Supreme Court, there have been recent attempts by the legislature to tax personal incomes; now, therefore,

BE IT RESOLVED BY THE SENATE OF THE ONE HUNDRED FOURTH GENERAL ASSEMBLY OF THE STATE OF TENNESSEE, THE HOUSE OF REPRESENTATIVES CONCURRING, that a majority of all the members of each house concurring, as shown by the yeas and nays entered on their journals, that it is proposed that the Constitution of the State of Tennessee be amended as follows:

Article II, Section 28, is amended by deleting the following sentence:

The Legislature shall have power to levy a tax upon incomes derived from stocks and bonds that are not taxed ad valorem.

and by substituting instead the following paragraph:

The Legislature shall have power to levy a tax upon incomes derived from stocks and bonds that are not taxed ad valorem. However, no department of government identified in Article II, Section 1, shall have any power to implement or enforce any tax on, or measured by, the earned personal income of any natural person (including wages, salaries or tips), unless the tax and its rate or rates are ratified by a majority of qualified voters participating in a statewide referendum. Any such referendum shall be held at the next November general election occurring at least one hundred twenty days after the tax and its rate or rates are proposed by enactment of the Legislature; and no such referendum shall be held more often than once in six years.

BE IT FURTHER RESOLVED, that the foregoing be referred to the One Hundred Fifth General Assembly and that this resolution proposing such amendment be published by the secretary of state in accordance with Article XI, Section 3, of the Constitution of the State of Tennessee.

BE IT FURTHER RESOLVED, that the chief clerk of the senate is directed to deliver a copy of this resolution to the secretary of state.